

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6392 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A K VYAS

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioners

MR ND GOHIL AGP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/07/97

ORAL JUDGEMENT

Petitioners are Compounders serving under the Government in Labour and Employment Department. All the petitioners claim to be qualified Compounders i.e. they possess the qualification of Diploma in Pharmacy. Petitioners are appointed in different Government Industrial Training Institutes where they discharge their duties as Compounders. It is the claim of the

petitioners that these petitioners were treated at par with other qualified Compounders who are serving as such in the Government in its Health and Family Welfare Department, and who are discharging duties at Government Dispensaries, Health Centres and Hospitals. The petitioners claim that the educational qualification possessed by the petitioners and the other group of Compounders are same and that the nature of duties to be performed by them are also the same. Considering this fact, the petitioners and other Compounders were treated at par as far as their pay is concerned. The Government revised the pay of its servants under the Gujarat Civil Services (Revision of Pay) Rules, 1987. Said pay revision was given effect to from 1st January, 1986 and all the qualified Compounders serving under the Government, under the Health and Family Welfare Department and under the Labour and Employment Department, were placed in the scale of qualified Compounders i.e. of Rs.1200-2040. Accordingly, the petitioners also received their pay in the scale of Rs.1200-2040. In the year 1991, the Government issued a further Notification amending the provisions made in the above referred 1987 Rules. The Notification is dated 20th March, 1991 (Annexure-E to the petition). In view of the said amendment, the qualified Compounders serving under the Health and Family Welfare Department of the Government have been placed in the scale of Rs.1350-2200. This pay revision has been given effect to from 1st January, 1986.

2. Learned advocate Mr. Majmudar has appeared for the petitioners and has submitted that these petitioners and the Compounders in the Health Department were placed in the same payscale and that parity was maintained amongst these groups of Compounders since inception. Even during the pay revision which was made effective from 1st June, 1973, the parity of pay between two group of Compounders was maintained. He has further submitted that the nature of duties to be performed by both the groups of Compounders are similar and all of them are required to dispense medicines to the patients according to the prescription of the Doctor. He has submitted that the present pay revision has been given effect to on account of the report of the Experts Committee appointed by the Government. However, the petitioners who were then new recruits, could not present their case before the Experts Committee and the Experts Committee had no occasion to examine the claim of the petitioners. Thus, in absence of any reference to the Experts Committee, the petitioners' pay has not been revised while the pay of the Compounders working under the Health Services of the

Government has been revised.

3. The claim made by the petitioners has been contested by the State. Learned AGP Mr. N.D.Gohil has appeared for the State. He has read-over the affidavit made by one Shri J.M.Parmar, Deputy Secretary to the Government, Labour and Employment Department. Mr.Gohil has emphasised that the nature of duties to be performed by the Compounders in the Health Services can not be the same as those who are serving in the Industrial Training Institutes. The Compounders in the Health Services are posted in various Government Dispensaries, Health Centres and Hospitals. They have to dispense medicines according to the Doctor's prescription. They are required to treat all the patients who take treatment at such Health Centres. So far as the Compounders in Industrial Training Institutes are concerned, they have to dispense medicines only to the pupils and staff of such Institutes who may need some medical treatment during their training hours. Thus, the group of people to whom such Compounders are required to dispense medicine is small and limited and their working hours are also fixed, while the Compounders in the Health Services may have to do night duties also and may have to render emergency service. He has further submitted that in view of the several medical facilities provided by the Government under its Health programme, the Industrial Training Institutes do not need the services of the Doctors and such services have been withdrawn for some time. Thus, the Compounders serving in the Industrial Training Institutes are not required to dispense medicines. However, they may direct the patients to nearby Government Hospitals or Dispensaries or the Medical Centre. Thus, they have to perform limited duties which justifies the action of the Government in not revising their salary as has been done in the case of the Compounders serving under the Health services.

4. It is quite obvious that the services to be performed by the Compounders under the Health services and those who are appointed in the Industrial Training Institutes may not be the same. However, it can not be overlooked that inspite of the difference in nature of duties, parity of pay was maintained amongst all these Compounders. The Government, therefore, is not right in refusing to maintain the same parity even after 1991 amendment. It is not disputed that the petitioner's case was not referred to the Experts Committee and the Experts Committee did not have an occasion to examine the claim of the petitioners. The Government has rejected the claim of the petitioners merely taking into consideration

the nature of duties to be performed by such Compounders. The Government has not taken into consideration the fact that irrespective of difference in nature of duties to be performed by such Compounders, parity of pay was maintained amongst such Compounders. Further, the petitioner's representation for parity of pay with those Compounders serving under the Health Services has been rejected by a cryptic order made on 1st January, 1994.

5. Petition is, therefore, allowed. The petitioners shall have a liberty to make a fresh representation to the Government in the subject matter of this petition within one month from today. Government is directed to consider such representation keeping in view the nature of duties to be performed by both the sets of the Compounders, the recommendations made by the Pay Commission and the Experts Committee and the parity of pay hitherto maintained amongst both the groups of Compounders. Such consideration shall be done within a period of three months from the date of receipt of the representation. In the event the petitioners ' claim for parity of pay is rejected by the Government, same shall be supported by a speaking order and the petitioners shall have liberty to challenge the same. Petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. There shall be no order as to costs.

JOSHI